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Supreme Court, U.S.
FILED

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No.

In The Supreme Court of the United States

JUAN PEQUENO,

Petitioner,

v.

MICHAEL SCHMIDT,
Ch7 Trustee,

Respondent,

Petition For A Writ Of Certiorari
To Review The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question #1:

This litigation involves the same above parties and derives from the same bankruptcy cause #01-24255 originally filed on December 31, 2001. The earlier bankruptcy appellate ruled in Pequeno v. Schmidt, 307 B.R. 568 (S.D. Tex. 2004), on March 31, 2004, that Pequeno had an 'absolute right to convert' to Ch13 which had been unlawfully denied by the lower Bankruptcy court based on Trustee Schmidt's false allegations. The Court ruled that because Pequeno had been granted Ch13 conversion, prior to Ch7 Trustee Schmidt's conditional settlement, it was Pequeno was authorized to settle Pequeno's Judgment, and not Trustee Schmidt, thus rendering moot the alleged conditional settlement of September 25, 2002.

Pursuant to superior appellate court's ruling on granting Pequeno's Ch13 conversion, the Bankruptcy Court finally entered order on July 20, 2004 adhering to superior court's decisions.

In spite of Bankruptcy court's order of conversion on July 20, 2004, Trustee Schmidt still continued in 'bad faith' filing multiple motions attempting to re-convert Pequeno's estate back to Ch7. On Trustee Schmidt's 2nd attempt to re-

convert Pequeno's Ch13 chapter, Bankruptcy court entered order to re-convert Pequeno to Ch7 and then proceeded to assign Trustee Schmidt to again administer the estate.

Trustee Schmidt then quickly proceeded to cash-out Pequeno's Final Judgment of $400,000 which Trustee Schmidt reduced to $140,000 in agreement with City of Brownsville which had initially illegally dismissed Pequeno. Pequeno had a 100% pay plan to pay all creditors and save Pequeno's home of twenty years. But instead Bankruptcy court allowed Trustee Schmidt to pay the full amount of $140,000 to himself, and his hired attorneys, with creditors getting ('0') zero.

Trustee Schmidt's main argument was that Pequeno's Judgment was not pledged in Pequeno's Ch 13 plan, contrary to record evidence.

Clearly, Trustee Schmidt has chosen to compromise his ethics of law for his obvious benefit of money.

Pequeno clearly pledged his Judgment in his filed Ch13 plan of July 23, 2004, Bankruptcy docket#184. Pequeno has a right to re-organize in a Ch13 and to say otherwise is in conflict with the new Bankruptcy law of April 2005 which became effective in October 17, 2005, and is in conflict with U.S. Supreme court and other Federal courts.

Our basic foundation of rule of law is based on the record of evidence before the Courts. All of our American courts depend on the foundation of the record of evidence before the Courts. The new Bankruptcy law states that if a debtor works, debtor should be reorganizing in a Ch13. Pequeno is a debtor who has been working and should be reorganizing in a Ch13.

The first question presented therefore is, whether the lower courts such as the Federal Bankruptcy Courts, the District Courts and the 5th Circuit court of Appeals must adhere to the record of evidence of the case, in which the evidence is obvious, (especially when not presented before a jury). A Court cannot make-up or ignore the actual statements in a document in order to misconstrue the facts, for to do so is contrary to the new Bankruptcy law of April 2005, contrary to U.S. Federal rules and U.S. Constitutional Law, and is in conflict with decisions of U.S. Supreme Court and other Federal Circuit Court of Appeals.

Question #2

Bankruptcy Court's recent ruling of September 26, 2005 to deny Pequeno's motion to null and void Trustee Schmidt's conditional settlement of September 25, 2002, is in conflict with the 'law of case doctrine' decisions in the U. S. Supreme Court and with the other Federal Courts

since same ruling has been decided by superior Bankruptcy Appellate court in Pequeno v. Schmidt, 307 B.R. 568 (S.D. Tex. 2004).

The Bankruptcy Appellate Panel for the 5th Circuit affirmed the decision of the Bankruptcy court for the Southern District of Brownsville and is in conflict with the 'law of case doctrine' decisions in the U.S. Supreme Court and with other Federal Courts since same ruling has been decided by superior Bankruptcy Appellate Court in Pequeno v. Schmidt, 307 B. R. (S. D. Tex. 2004).

The 5th Circuit Court of Appeals ruled to dismiss Petitioner's appeal eventhough the 'law of the case doctrine' bars Trustee Schmidt from using a conditional settlement Order of September 25, 2002 which had been rendered 'ineffective' and moot on an earlier appeal before the Bankruptcy Appellate court and affirmed before the 5th Circuit Court of appeals, and is in conflict with the 'law of the case doctrine' decisions in the U.S. Supreme court and with other Federal Courts.

The second question presented therefore is, once issues have been decided by U. S. Federal superior appellate courts in earlier appeals involving same parties and deriving from same bankruptcy case and become 'the law of the case', can 'the law of case' be denied by the 5th circuit Court of appeals, in conflict with decisions of U.S. Supreme court and other Federal Circuit Court of Appeals.

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OPINION BELOW

The Order by the Fifth Circuit Court of Appeals to dismiss Petitioner's appeal is docketed in 5th Circuit appeal#07-40721 and was filed on January 18, 2008. The decision of the United States District Appellate Court for the Southern District of Texas is reported in civil cause #05-cv0169, was filed on July 6, 2007. The decision by the Bankruptcy Court for the Southern District of Texas is reported in civil cause#01-24255, docket#274, filed on December 27, 2004.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The Order of the United States Court of Appeals for the Fifth Circuit was entered on January 18, 2008.

CONSTITUTIONAL PROVISIONS AND STATUTES

Title 11 U.S.C. § 1307(c) states the following:

" (c) Except as provided in subsection (e) of this section on request of a party in interest or the United States trustee and after notice and hearing, the court may convert a case under chapter this chapter to a case under chapter 7

of this Title or may dismiss a case under this chapter whichever is in the best interests of creditors and the estate, for cause, including –"

STATEMENT OF THE CASE

A. Factual Background

The following history of Pequeno's case can be found in previous Bankruptcy appeal#03cv029 Order of March 31, 2004, in which Pequeno was granted Ch13 conversion and same decision was then affirmed by the 5th Circuit Court of Appeals, appeal#04-40573 on March 4, 2005. (See 5th Circuit Court of Appeals, opinion of March 4, 2005, #04-40573)

On December 31, 2001, Appellant, Juan Pequeño ("Pequeño."), *pro se*, filed a petition for relief under Chapter 7 of the Bankruptcy Code[1] since Pequeno's home of 20 years with over $30,000 of equity was scheduled to be foreclosed the next day which was New Years Day.

Pequeno had had difficulty paying for his home after Pequeno's previous employer, the City of Brownsville, dismissed Pequeno illegally, by

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1 Pequeno v. Schmidt, 307 B.R. 568 (S.D. Tex. 2004)

violating Pequeno's First Amendment of freedom of speech. Pequeno who previously was the Management Information System Director for the City of Brownsville, spoke to the Mayor, City Commissioners, and the public, at a public meeting, stating that the purchase of an outdated DOS-based software for EMS, would significantly and adversely affect the all time record high revenue of over a million dollars.

On November 27, 2000, Pequeño filed a Title 42 U.S.C. §1983 lawsuit in this Federal court.[2]

Pequeno advised his attorney at the time, Frank Costilla, that Pequeno was at risk of losing Pequeno's home, but Attorney Costilla stated to Pequeno that there was nothing that Mr. Costilla could do concerning this issue. This is when Pequeno decided to file for Bankruptcy.

After Mr. Costilla discovered that Pequeno had filed for Bankruptcy, Mr. Costilla recommended to Pequeno to dismiss the Bankruptcy.

Bankruptcy Court denied Pequeno's Motion to dismiss, based on Chapter 7 Trustee Michael Schmidt's, ("Trustee Schmidt"), objection. Trustee Schmidt objected because he now knew that Pequeno had a won a substantial Judgment, and

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2 *Pequeño v. City of Brownsville*, Cause No. B-00-180; Judge Tagle presiding.

Trustee Schmidt planned to settle the Judgment for his personal gain.

Trustee Schmidt allowed creditors to receive a letter which stated that this was a 'no-asset' case and creditors were told not to file proof of claim. Consequently, creditors were discharged prior to Trustee Schmidt's proposed settlement of September 16, 2002.

The suit against the City of Brownsville was brought to trial on February 8-12, 2002 and was found to meet the criteria required pursuant to Title 42 U.S.C. §1983. Upon the verdict of the jury for Pequeno, the Honorable Judge Hilda Tagle entered a judgment in favor of Pequeño, in the amount of $400,359 plus $20,385 for attorney's fees (the "judgment").

The judgment is dated March 26, 2002. The City of Brownsville appealed the judgment to the United States Court of Appeals for the Fifth Circuit.

Pequeno made know to Trustee Schmidt that Pequeno planned to convert to Ch13 in order to pay for his homestead and other creditors; however, Trustee Schmidt stated that he would object in order to keep Pequeno in a chapter 7.

Trustee Schmidt's objection was in bad faith since in a conflict of interest, in breach of fiduciary duties, and against the best interest of creditors, Trustee Schmidt has been trying to control Pequeno's Judgment by keeping Pequeno in a Ch 7, hence the objection.

In spite of this, as evidenced by Bankruptcy docket, on July 17, 2002, Pequeno filed a 'Motion to Convert to Ch13', Dkt#50 pursuant to Title 11 U.S.C. § 706 (a) Bankruptcy Conversion rules. Pequeno had an 'absolute right' to convert to Ch13 pursuant to Bankruptcy law.

As shown in Bankruptcy docket, on August 7, 2002, the Bankruptcy Court held a hearing on Pequeno's Motion to Convert and granted same motion.

The Order of August 7, 2002 was entered in Bankruptcy docket on same date.

This Order of August 7, 2002 was neither revoked nor vacated by Bankruptcy Court, nor was the Order objected to by Trustee Schmidt, as evidenced in Bankruptcy docket.

Bankruptcy Court held hearing on October 9, 2002 and discussed whether to deny Pequeno's Ch13 conversion and whether to deny Pequeno's claim of property exemption, eventhough Bankruptcy court had already granted Pequeno's Ch13 conversion on August 7, 2002.

Prior to this same October 9, 2002 hearing, on September 10, 2002 the Bankruptcy Court docket evidences that Bankruptcy Court, in violation of Bankruptcy Conversion rules, Ordered that Trustee Schmidt could settle Pequeno's Judgment of $400,000 at the 5th Circuit, cause#02-40600, contingent on whether Pequeno was in Ch13 or a Ch7.

Also, prior to this same October 9, 2002 hearing, on September 25, 2002 Bankruptcy Court docket evidences that Bankruptcy Court in violation of Bankruptcy Conversion Title 11 U.S.C § 706 (a), approved Trustee Schmidt's $140,000 settlement of Pequeno's $400,000 Judgment, Dkt#75.

The Settlement of the September 25, 2002 Order, Dkt#75 was contingent on whether the Bankruptcy Court found that Trustee Schmidt was the sole owner of Pequeno's property pursuant to Bankruptcy conversion rules.

At the hearing of October 9, 2002, Bankruptcy Court decided to schedule Briefs and took the issues under advisement.

On November 7, 2002, Bankruptcy Court docket evidences that Bankruptcy Court, in violation of Title 11 U.S.C. §706(a) Bankruptcy Conversion rules, denied Pequeno's Ch13 conversion of August 7, 2002, denied Pequeno's objection to Schmidt's wrongful settlement of September 25, 2002, denied Pequeno's objection to Trustee Schmidt's wrongful authority to settle, and denied Pequeno's August 29, 2002 exemption claim of Pequeno's Judgment. The above 4 Bankruptcy Orders of November 7, 2002, were timely appealed by Pequeno on November 22, 2002.

Ruling by the Honorable Judge Andrew Hanen

On March 31, 2004, the Honorable Judge Andrew Hanen, pursuant to Title 11 U.S.C §706 (a) and §348 (e), Ordered that Bankruptcy did not have authority to deny Pequeno's absolute right to convert to Ch13 as of August 7, 2002, and reversed Bankruptcy Court's denial of Pequeno's Ch13 conversion, and thus rendered 'moot' the Settlement Order of September 25, 2002 which was contingent on whether Pequeno was found to be a Ch13 debtor. *See Pequeno v. Schmidt, 307 B.R. 568 (S.D. Tex. 2004)*

Ruling by the 5th Circuit Court of Appeals affirming Judge Hanen's 3/31/04 order

On March 4, 2005, the 5th Circuit Court of Appeals (In Pequeno vs Schmidt, cause#04-40573,

2004) affirmed the District Appellate ruling of Pequeno's right to Ch13 conversion as of August 7, 2002, pursuant to Bankruptcy Law.

Bankruptcy Court simply did not have authority to grant to Trustee Schmidt, the right to settle any of Pequeno's property as of August 7, 2002, pursuant to Title 11 U.S.C §706 (a) and §348 (e) Bankruptcy conversion law.

Trustee Schmidt's continuance interference against Pequeno's Ch13 confirmation

Ch7 Trustee Michael Schmidt continued to oppose Pequeno's Ch13 conversion even after Pequeno was rightfully granted Ch13 by superior court cause#03cv029, and affirmed by 5th Circuit of Appeals#04-40573.

On May18, 200[illegible], bankruptcy docket#170, Trustee Schmidt filed 1st motion to 'Cross' to reconvert to Chapter 7, wrongfully alleging that Pequeno did not qualify for Ch13 status and that creditors had already been discharged, now filing as creditor instead as Ch7 Trustee Schmidt.

At Bankruptcy hearing of July 7, 2004, Bankruptcy ruled to adhere to Honorable Judge Hanen's Order of March 31, 2004 and ruled orally to convert Pequeno to Ch13 and entered order on July 20, 2004 to convert to Ch13.

At same hearing of July 7, 2004 Bankruptcy Court also ruled to allow Trustee Schmidt, to file motion to reconvert Pequeno to Ch 7, eventhough Pequeno had been wrongfully harmed by Trustee Schmidt's wrongful accusations of 'bad faith' and wrongful legal authority that Pequeno could not convert to Ch13 and Bankruptcy Court ruling in favor of Trustee Schmidt and thus harming Pequeno's estate and creditors and set hearing to hear Trustee Schmidt's 'Cross' motion for August 4, 2004.

On July 20, 2004, Bankruptcy court entered noticed that Ch13 Trustee Boudloche was now the assigned Ch13 Trustee for Pequeno's case and removed Trustee Schmidt from case.

On July 23, 2004 Pequeno filed Ch13 plan, bankruptcy docket#184, in compliance with Bankruptcy order of July 20, 2004 and pledged Pequeno's Judgment with a 100% payment plan to creditors.

On August 3, 2004 Pequeno filed motion to vacate Discharge of Creditors, bankruptcy docket#188, as proof of 'good faith' that Pequeno would be including and paying his creditors in his Ch13 plan. This motion was opposed by Trustee Schmidt and was set for hearing on October 6, 2004.

At Bankruptcy hearing of August 4, 2004, Bankruptcy court heard again Trustee Schmidt's allegations that Pequeno did not qualify to be in a Ch13 plan because creditors had been discharged, that Pequeno could not pay in Ch13 plan for 36 months and that his administrative fees were not included. Bankruptcy Court ruled to case these issues under advisement.

On September 13, 2004, which was actually filed on September 17, 2004, and not received by Pequeno until September 22, 2004 Bankruptcy Court entered Order denying Trustee Schmidt's motion to reconvert, bankruptcy docket#201, without prejudice to re-file again if Pequeno did not confirm his Chapter 13 plan by October 7, 2004.

Pequeno was given a less that 2 weeks to confirm his Ch13 plan eventhough Pequeno had been meeting w/Ch13 case manager over emails and the Ch13 341 hearing had yet to be set by Ch13 Trustee Boudloche.

At October 6, 2004 hearing Bankruptcy Court granted Pequeno's Motion to vacate discharge of creditors so that Pequeno could proceed with Ch13 confirmation, bankruptcy docket#203.

On October 6, 2004 Bankruptcy Clerk entered noticed that Ch13 Boudloche had set Ch13 341 meeting form November 5, 2004, bankruptcy docket#204.

On October 22, 2004, Trustee Schmidt filed Schmidt's 2nd attempt to reconvert Pequeno to a Ch7, bankruptcy docket#219 and chose to misconstrue the facts that Pequeno had 'failed to confirm Ch13 plan by October 7, 2004' when Trustee Schmidt knew that by his continual litigation that Trustee Schmidt's interfering was preventing Pequeno from having an actual chance of confirming to Ch13 in violation of Bankruptcy law. Also September 13, 2004, bankruptcy docket#201 order clearly stated that Trustee Schmidt would be allowed to refile his motion to reconvert if Pequeno had not converted by October 7, 2004.

Trustee Schmidt falsely stated to Bankruptcy Court that Pequeno had been attempting to convert to Ch13 since Hon. Judge Hanen's Order of March 31, 2004 and that Pequeno had had ample time to confirm, that Pequeno had not paid any payments to the plan for more than 2 years since August 2002, and that Pequeno had not filed a 100% plan that included his judgment, and that Pequeno had not included his administrative fees so plan could not be affirm.

Pequeno was given less than 2 weeks to have Pequeno's Ch13 plan confirmed eventhough Ch13 Trustee Boudloche is the Trustee that recommends confirmation before the Court, and Ch13 Trustee Boudloche had not even scheduled the '341 meeting' until October 6, 2004 for Pequeno's Ch13 confirmation, as proven by bankruptcy docket.

On November 5, 2004 Pequeno filed his amended Bankruptcy schedules for his Ch13 plan in collaboration with Ch13 Trustee Boudloche's case manager recommendations, bankruptcy docket#230.

On November 5, 2004 Ch13 Trustee Boudloche held Ch13 341 meeting with Pequeno and made additional recommendations to Pequeno about designating that Pequeno would be paying for 36 months, that Pequeno formally file objection to claims to both creditors Trustee Schmidt and unsecured creditor Alejandra Tapiero, and that Pequeno make payments into plan prior to confirmation since the erroneous issue of delinquency of $16,000 would be going before the Judge Schmidt.

On November 30, 2004 Pequeno filed amended Ch13 plan, bankruptcy docket#243, that included Ch13 Trustee Boudlouche's recommendations.

On November 30, 2004 Pequeno filed amended schedules to Ch13 plan, bankruptcy docket#244, and made payments into Ch13 plan in accordance with Ch13 Trustee Boudlouche's recommendations.

On November 30, 2004 Pequeno filed Objection to Trustee Schmidt's proof of claim, bankruptcy docket#245, since the majority of his alleged fees were Trustee Schmidt's wrongful attempts to keep Pequeno from converting to Ch13 in the first place, and Pequeno also filed objection to proof of claim by unsecured creditor Alejandra Tapiero.

At Bankruptcy hearing of December 1, 2004, bankruptcy docket#249, following Ch13 Trustee Boudloche's recommendations, Pequeno filed in Bankruptcy court, exhibits proving Pequeno's filing of Ch13 100% plan, Pequeno's payments of 5 months into the plan, and Pequeno's objection to Trustee Schmidt's proof of claim.

On December 27, 2004, bankruptcy docket#257, Bankruptcy Court's entered Order to reconvert Pequeno from Ch13 to Ch7, which goes against the weight of the evidence and is in violation of Title 11 § 1307 since there existed 'No cause' to reconvert Pequeno to Ch7 in light of the evidence.

Two years later, on July 6, 2007 District Appellate Court, cause#05cv169, affirmed the lower Bankruptcy Court on Pequeno's Ch13 re-conversion. Pequeno timely appealed to the 5th Circuit Court of Appeals. On January 18, 2008 the 5th Circuit entered Order dismissing Pequeno's appeal.

Should lower courts have allowed Trustee Schmidt who is an arm of the court get away with over $140,000 that was pocketed by himself, his own hired firm, and his hired attorneys with the creditors getting nothing?

Is this what Bankruptcy was setup to do? To enrich the pockets of the Trustees at the expense of the debtors and the creditors. Trustee Schmidt's own proof of claim is proof that Trustee Schmidt and his attorneys postured themselves to gain control of Pequeno's Judgment.

Because of Trustee Schmidt's false allegations, Pequeno was unlawfully denied Ch13 conversion back in October 2002 and consequently lost his home of 20 years, and then Trustee Schmidt has relentlessly pursued Pequeno's Judgment for his pockets by again bringing false accusations upon pro-se Pequeno, on appeal, Pequeno won the absolute right to convert on March 31, 2004, almost 2 years later but too late for his home and the only fraud found was on

Trustee Schmidt who had been plotting from the beginning to gain control of Pequeno's Judgment. Trustee allowed creditors to get discharged so that he would get the entire Judgment.

Pequeno has lost his home of 20 years, and over $500,000, because of Trustee Schmidt's bad faith and Bankruptcy Court's blind approval of obvious wrongdoings of Trustee Schmidt. Bankruptcy court has even stated to Pequeno that $400,000 is really not a lot of money in today's standards.

Choosing to deny record of evidence, such as Pequeno's Ch13 plan, and then falsely stating that Pequeno did not pledge his entire Judgment, is a smack of 'injustice' against the integrity of justice and what the Courts stand for.

On January 5, 2005, Pequeño timely filed Notice of Appeal for the above ruling of Bankruptcy Court, docket#259.

SUMMARY AND REASONS FOR WRIT

Petitioner Pequeno clearly did commit entire Judgment into Pequeno's Ch13 plan, contrary to Trustee Schmidt's false statements and Bankruptcy Court's decision to erroneously not acknowledge Pequeno's Ch13 plan which shows Pequeno's commitment of Pequeno's Judgment, Bankruptcy Docket#184, cause#01-24255 please see included Appendix F.

Quote from Pequeno's Ch13 plan, docket#184.:

Pequeno's Ch13 plan filed on July 23, 2004, Docket#184, clearly committed Pequeno's entire Judgment as depicted in same filed document:

A. *"Attachment 4 – Debtor's 100% payment plan to creditors"*

1. *Debtor will use Debtor's Final Judgment to pay 100% payment plan*

to creditors during the payment plan period."

(See Pequeno's Bankruptcy cause#01-24255 – Pequeno Ch13 plan, docket#184, filed on July 23, 2004.)

B. Under Oath, Trustee Schmidt himself admits in Open Court, that Pequeno Dedicated Pequeno's Judgment:

In Bankruptcy hearing of August 4, 2004 cause#01-24255, page 48, lines 13-20:

Trustee Schmidt under oath states to Court that Pequeno had filed 100% Ch13 plan that included Pequeno's Judgment. Later, with unclean hands, Trustee Schmidt falsely states to Bankruptcy Court that Pequeno did not include Pequeno's Judgment.

C. Pequeno's Ch13 plan exceeds liquidation test

Further, this same Ch13 plan of July 23, 2004 exceeds the 'liquidation test' because Pequeno would be paying all creditors 100% from Pequeno's Judgment instead of creditors being paid -0- in a Ch7. plan by Trustee Schmidt who already had plans to cash-out Pequeno's Judgment between Trustee Schmidt himself, Schmidt's own firm, and Schmidt's partner Law office of Frank Costilla.

D. Trustee Schmidt's unclean hands as proven in Schmidt's own proof of claim

Trustee Schmidt's original plan was to cash-out Pequeno's Judgment in order to pay himself and his own law firm $70,000, and pay Law Office of Frank Costilla another $70,000, with creditors getting -0-.

Trustee Schmidt did nothing as a Trustee to correct a creditors letter which was mailed out to all creditors, stating that Pequeno's case was a 'no asset case' and that 'no proof of claim should be sent in by creditors."

Trustee Schmidt in his conflict of interest and in breach of fiduciary duties, allowed creditors to get discharged so that the settlement monies in his control as a Ch7 Trustee, could be maximized for his own self.

Trustee's own court filed proof of claim documents evidences that Trustee Schmidt was actively negotiating Pequeno's $400,000 judgment, months before the creditors' letter was sent out, and yet Trustee Schmidt claimed that he did not know of Pequeno's Judgment, in order to falsely accuse of Pequeno of bad faith.

Trustee Schmidt with 'unclean hands' is now attempting for a 2nd time to do exactly the same thing, to cash-out Pequeno's Judgment for himself, his own firm and for Law Office of Frank Costilla, by bringing untrue statements against Pequeno's Ch13 confirmation, by interfering with Pequeno's Ch13 confirmation in violation of Bankruptcy laws and by lying to Court that Pequeno had not committed Pequeno's Judgment.

It is important to note that the Ch13 Trustee did not recommend to re-convert Pequeno Ch13 plan; it was Ch7 Trustee Schmidt with 'unclean hands'.

It is also important to note that it was Ch7 Trustee Schmidt who opposed Pequeno's good faith motion to re-voke Ch7 discharge as Ch7 Trustee Schmidt had stated that Pequeno did not qualify because a Ch7 discharge had already occurred.

Why would Trustee Schmidt oppose a re-voke of discharge of creditors? Isn't Trustee Schmidt's duty to first pay creditors first? This is clearly, a conflict of interest with Pequeno's case, since Trustee Schmidt was now the largest creditor to gain from Pequeno being re-converted. Trustee Schmidt again was with

unclean hands and obvious intentions to re-convert Pequeno so that Trustee Schmidt could benefit --- not the creditors. This is clearly a violation of Bankruptcy rules and Trustee Schmidt's fiduciary duties to creditors.

E. Summary that Pequeno's good faith Ch13 plan exceeds liquidation test

Pequeno's both filed Ch13 plans of July 23, 2004, docket#184 and November 30, 2004, docket#243, exceed the Ch7 liquidation test because both provide Pequeno's entire Judgment in plan and both object to Trustee Schmidt's administrative fees and both provide for payments into plan.

Since evidence is clear that Pequeno did commit Pequeno Judgment contrary to lower Bankruptcy Court, and Pequeno's plan which allowed payment of 100% of creditors clearly exceeded liquidation test of earlier Ch7 plan, and that Ch7 Trustee Schmidt hasbeen proven by his own proof of claim to be with unclean hands against creditors and Bankruptcy law, the Bankruptcy Order of December 27, 2004, docket#257 should be vacated.

Eventhough superior court ruled to grant Ch13 conversion, on March 31, 2004, cause#03cv029 and that Bankruptcy court did not have authority to deny conversion as of August 7, 2002, Ch7 Trustee Schmidt continued with 'unclean hands' to attempt to re-convert Pequeno back to Ch7.

At August 4, 2004 hearing, Bankruptcy Court heard again Trustee Schmidt's false allegation of bad faith against Pequeno which had been already been brought to court more that two years earlier and that Pequeno did not qualify because creditors had been discharged.

All these issues were 'not' issues of confirmation as stated by Bankruptcy court judge at this same hearing but issues brought by Trustee Schmidt's motion to reconvert.

On September 13, 2004, Bankruptcy Court ordered that Pequeno be given ample time to confirm, since up to this time, Pequeno had not been given time since Ch7 Trustee Schmidt was contesting Pequeno's every step to confirmation.

On same September 13, 2004 Order, Bankruptcy Court stated that Trustee Schmidt would be allowed to re-file his motion to re-convert if Pequeno had not confirm a plan by October 7, 2004.

This was less than 2 weeks and Ch13 Trustee Boudloche was waiting for Bankruptcy court's order on motion to reconvert. In fact it wasn't until October 6, 2004 that Ch13 Trustee Boudloche filed for Ch13 341 meeting and it wasn't until October 8, 2004 that Bankruptcy Court entered order to re-voke discharge which Trustee Schmidt was complaining about and opposing.

Clearly, Pequeno's Ch13 confirmation hearing was never held because of Trustee Schmidt's unclean hands interference. Again, Ch13 Trustee Boudloche did not propose to re-convert Pequeno to Ch7, it was Ch7 Trustee Schmidt. It was Trustee Schmidt who stood to benefit from re-conversion to Ch7 not creditors.

This ruling clearly goes against the weight of the evidence that Pequeno did file 100% Ch13 plan, did commit Pequeno entire Judgment, and also goes against the new Bankruptcy law that was effective at the time, that Pequeno qualify to be in a

Ch13 plan and should be allowed to pay his creditors.

Bankruptcy Court allowed Ch7 Trustee Schmidt to interfere with Pequeno's Ch13 confirmation by lying to Court and by ignoring court documents contrary to Order and allowing Trustee Schmidt to play with
Bankruptcy Court rules in violation of Bankruptcy law.

In summary, Pequeno did file a feasible plan prior to October 7, 2004, this same plan of July 23, 2004, docket#184, committed Pequeno's entire Judgment and exceeded 'liquidation test' because all creditors would get paid or have an opportunity to get paid instead of getting -0- with Trustee Schmidt's plan.

Congress did not intend for Ch7 Trustee to interfere with obvious conflict of interest in being the highest stake holder, while objecting to creditors' discharge so that Trustee Schmidt would pocket the money with creditors getting -0-.

Upon passing of New Bankruptcy law, Pequeno qualified to stay in a Ch13 plan since Pequeno met the requirement pursuant to new Bankruptcy law, enacted in April 2005

Appeal record clearly shows that Bankruptcy Court failed to acknowledge Pequeno's Ch13 plan docket#184 which evidences that Pequeno did commit his entire Judgment, that Pequeno's plan exceeded the liquidation test, that Pequeno had filed amended Ch13 plan to address confirmation issues, and that Pequeno had made interim payments into the Ch13 plan. Contrary to other U. S. Federal Courts and U.S. Constitutional law the lower Courts have failed to acknowledge the clear 'record evidence' and to do so is a smack of 'integrity of justice' that should not be allow.

CONCLUSION

Pequeno respectivefully requests for Petition for Writ since these rulings are contrary to the U. S. Supreme Court and other Circuit Court of Appeals rulings. The petition for a writ of certiorari should be respectivefully granted.

Respectfully submitted,

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April 17, 2008

APPENDIX A

IN THE UNITED STATES COURT OFAPPEALS
FOR THE FIFTH CIRCUIT

No. 07-40721

[Filed 1/18/2008]

In The Matter of: JUAN PEQUENO

Debtor

JUAN PEQUENO
Appellant

v.

MICHAEL B SCHMIDT; CINDY BOUDLOCHE;
US TRUSTEE BARBARA JUE

Appellees

Appeal from the United States District Court for the Southern District of Texas, Brownsville

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the appellee's motion to dismiss the appeal is *GRANTED*.

/s/_REAVLEY, SMITH, BARKSDALE

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
-BROWNSVILLE DIVISION-

	§	[Filed 7/06/2007]
JUAN PEQUENO	§	
	§	
Appellant,	§	Civil No. B-05-169
	§	
v.	§	
	§	
MICHAEL B. SCHMIDT,	§	
TRUSTEE	§	
Appellee.	§	

ORDER

Pequeno appeals the Bankruptcy Court's December 27, 2004 "Order Granting Motion to Convert Case to Chapter 7," reconverting his case from a chapter 13 proceeding back to a chapter 7 proceeding. (Bankr. Doc. No. 257). The Bankruptcy Court's order states:

The Court finds that the case should be converted to Chapter 7 because the Debtor failed to

file a feasible plan of reorganization. The plan proposed does not provide for payment of administrative expenses and does not meet the liquidation test because it does not provide for dedication of Debtor's non-exempt portion of the

judgment to his plan. The Debtor was given amply opportunity to get a chapter 13 plan confirmed, but has wholly failed to achieve any success. As of the date this order is entered, no chapter 13 plan has been confirmed. The Debtor has also failed to make any interim plan payments to the Chapter 13 Trustee. A chapter 13 debtor must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules to enjoy the protection of the bankruptcy system. Debtor failed to do so and should not be rewarded by continuing to remain in chapter 13.

Id. Thus, the Bankruptcy Court clearly converted Pequeno for, among other reasons, his failure to confirm, or even file, a feasible chapter 13 plan.

Arguing that the Bankruptcy Court abused its discretion by reconverting his case back to chapter 7, Pequeno complains that: (1) he was not given enough time to confirm his chapter 13 plan, (2) he should not have been forced to confirm a chapter 13 plan before the 341 meeting, and (3) the Bankruptcy Court violated 11 U.S.C. § 1307. The Court finds Pequeno's arguments unavailing.

Bankruptcy Rule 3015 requires that when a case is converted to chapter 13, a plan shall be filed within fifteen days. Pequeno was, by an oral order of the Bankruptcy Court, converted to Chapter 13 on July 7, 2004, which was followed by a written order on July 20, 2004. (Bankr. Doc. No. 180). During the July 7, 2004 hearing, Pequeno was ordered to file a plan by July 23, 2004, with the plan to be reviewed by the court at the August 4, 2004 hearing. (Doc. No. 177). This order clearly comports with the bankruptcy rules.

Pequeno filed a plan by the Bankruptcy Court's deadline, but one that was insufficient because it did not meet the "liquidation test" as it failed to include his judgment against the City of Brownsville and it failed to provide for payment of administrative expenses. (Bankr. Doc. No. 184). His failure to include as part of the debtor's estate the judgment against the City of Brownsville was in clear disregard of this Court's order of March 31, 2004. Pequeno v. Schmidt, 307 B.R. 568 (S.D. Tex. 2004), aff'd 126 F. App'x 158 (5th Cir. 2005). On September 13, 2004, the Bankruptcy Court gave Pequeno another chance. The Court gave him until October 7, 2004, explaining that he "should be allowed a reasonable period of time to confirm a chapter 13 plan," denying the Trustee's motion to reconvert Pequeno back to chapter 7, without prejudice to refilling. (Bankr. Doc. No. 201). In response to this order giving him additional time,

Pequeno did not try to file a feasible plan or even move to have his non-feasible plan confirmed. Nor did he make any interim payments that would comply with the only plan he had filed.

Turning to Pequeno's argument that he should not have been forced to confirm a plan before the 341 meeting, 11 U.S.C. § 1324(b) states that "[t]he hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date." The 341 meeting was scheduled on November 5, 2004. However, Pequeno did not file a feasible plan either by October 7, 2004, or even by November 5, 2004, the date of scheduled 341 meeting. Therefore, the Bankruptcy Court's alleged error in this regard, if error at all, is harmless.

Finally, Pequeno erroneously relies on 11 U.S.C. § 1307. Section 1307 specifically states that a court may reconvert to chapter 7for, among other reasons, "unreasonable delay by the debtor," "failure to file a plan timely," "failure to commence making timely payments" or "denial of a confirmation of a plan"." Pequeno did not file a feasible plan in the time period ordered, and he

never filed a confirmable plan.[3] Once he was converted to chapter 13, his failure to properly follow through certainly delayed the proceedings. He also admitted in open court that he failed to make the required payments. Judge Schmidt on at least one occasion gave him more time to put together a confirmable plan. Therefore, reconversion for failure to file a feasible plan, make interim payments or to confirm a plan are all legitimate reasons for reconversion under § 1307.

Due to the fact that Pequeno has not met his burden of showing the Bankruptcy Court's findings were clearly erroneous, the Bankruptcy Court's Order Granting Motion to Convert Case to Chapter 7 (Bankr. Doc. No. 257) is AFFIRMED. All pending motions in this case are DENIED as moot.

Signed this 6th day of July, 2007

/s/ Andrew S. Hanen
United States District Judge

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3 Although Pequeno eventually filed another chapter 13 on November 30, 2004, well after the October 7 deadline (and on the eve of the December 1 hearing on the Trustee's motion to reconvert), it, too, fell short of being a feasible plan.

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
-BROWNSVILLE DIVISION-

[Filed 12/27/04]

IN RE:	§	
	§	
JUAN PEQUENO	§	Case No. 01-24255-B-13
	§	
Debtor,	§	
	§	

ORDER GRANTING MOTION
TO CONVERT CASE TO CHAPTER

On this day came on for consideration the Motion to Convert Case to Chapter 7 filed by Michael B. Schmidt, former Chapter 7 Trustee and now an administrative creditor of the estate ("Schmidt"). The Court, having heard the arguments of counsel and of the debtor, pro se, finds that the Motion to Convert should be granted.

Juan Pequeno ("Debtor") filed his Chapter 7 bankruptcy petition on December 31, 2001, and

Schmidt was appointed Chapter 7 Trustee. Debtor was the successful plaintiff in a lawsuit which was filed prior to his bankruptcy. A judgment in Debtor's favor in the amount of $400,359.00, plus attorneys fees, was entered on March 26, 2002. The losing Defendants appealed and Schmidt and another attorney pursued the appeal on Debtor's behalf. Realizing that the judgment was part of his non-exempt assets and therefore part of his bankruptcy estate, Debtor then filed a motion to convert to Chapter 13. This Court denied the motion to convert, but following Debtor's appeal of that denial, the United States District Court entered an order on April 1, 2004, reversing this court's refusal to convert.

In conformance with the order of the District Court, this court converted the case to Chapter 13 on July 20, 2004. Schmidt filed a motion to re-convert to chapter 7 which this court denied by order entered September 13, 2004. In the September order, the Debtor was given until October 7, 2004, to confirm a chapter 13 plan. Debtor failed to confirm a plan and Schmidt filed his Motion to Convert to Chapter 7 which is now before the Court.

The Court finds that the case should be converted to Chapter 7 because the Debtor failed to file a feasible plan of reorganization. The plan as proposed does not provide for payment of administrative expenses and does not meet the liquidation test because it does not provide for

dedication of Debtor's non-exempt portion of the judgment to his plan. The Debtor was given ample opportunity to get a chapter 13 plan confirmed, but has wholly failed to achieve any success. As of the date this order is entered, no chapter 13 plan has been confirmed. The Debtor also failed to make any
interim plan payments to the Chapter 13 Trustee. A chapter 13 debtor must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules to enjoy the protection of the bankruptcy system. Debtor failed to do so and should not be rewarded by continuing to remain in chapter 13.

It is therefore ORDERED that the Motion to Convert Case to Chapter 7 is hereby GRANTED, and Case No. 01-24255-B-7 is hereby CONVERTED to Chapter 7.

At Corpus Christi, Texas, this 27th day of December, 2004.

/s/ Richard S. Schmidt
United States Bankruptcy Judge

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
-BROWNSVILLE DIVISION-

[Filed 9/13/04]

IN RE:	§	
	§	
JUAN PEQUENO	§	Case No. 01-24255-B-13
	§	
Debtor,	§	

ORDER DENYING CROSS MOTION
TO RECONVERT TO CHAPTER 7

On this day came on for consideration the Cross Motion to Reconvert to Chapter 7 filed by Michael B. Schmidt. The Court, having heard the arguments of counsel and of the debtor, pro se, finds that the debtor should be allowed a reasonable period of time to confirm a chapter 13 plan of reorganization and the Motion to Reconvert should be denied without prejudice to re-filing in the event debtor does not confirm a chapter 13 plan on or before October 7, 2004

It is therefore ORDERED that the Cross Motion to Reconvert is hereby DENIED without prejudice.

At Corpus Christi, Texas, this 13th day of September, 2004.

/s/ Richard S. Schmidt
United States Bankruptcy Judge

APPENDIX E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
-BROWNSVILLE DIVISION-

[Filed 7/20/04]

IN RE:	§	
	§	
JUAN PEQUENO	§	Case No. 01-24255-B-7
	§	
Debtor,	§	

ORDER AND NOTICE OF CONVERSION
OF CASE TO CHAPTER 7

This Case has been converted to Chapter 13 in accordance with the ruling of the Hon. Andrew Hannen made on April 1, 2004 in Civil No. B-03-029, styled Juan Pequeno, Appellant v. Michael B. Schmidt, Trustee, Appellee.

It is further ORDERED that Juan Pequeno shall file a feasible Chapter 13 Plan no later than July 23, 2004.

A hearing on Debtor's Plan and eligibility to proceed under Chapter 13 is now set for 9:00a.m. on August 4, 2004 at the United States Bankruptcy Court in Brownsville, Texas.

It is so **ORDERED**.

Dated: July 20, 2004

/s/ Richard S. Schmidt
United States Bankruptcy Judge